

**IN THE UNITED STATES DISTRICT COURT  
OF THE SOUTHERN DIVISION OF TEXAS  
HOUSTON DIVISION**

<b>PERCY UTLEY,</b>	)(	<b>Civil Action No.: 4:20-CV-1907</b>
	)(	<b>(Jury Trial)</b>
<i>Plaintiff,</i>	)(	
	)(	
<b>V.</b>	)(	
	)(	
	)(	
<b>CITY OF HOUSTON, TEXAS;</b>	)(	
<b>POLICE CHIEF ART ACEVEDO, Individually,</b>	)(	
<b>and JOHN DOE OFFICERS, Individually,</b>	)(	
	)(	
<i>Defendants.</i>	)(	

**PLAINTIFF’S FIRST AMENDED ORIGINAL COMPLAINT**

**TO THE HONORABLE JUDGE OF THE COURT:**

**NOW COMES** Plaintiff PERCY UTLEY pursuant to FRCP 15 and amends his complaint as a matter of course complaining of City of Houston, Texas, Police Chief Art Acevedo, and John Doe Officers, Individually, and will show the Court the following:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over Plaintiff’s federal claims, under 28 U.S.C. § 1331, 42 U.S.C. §§ 1983 and 1988, and supplemental jurisdiction, under 28 U.S.C. § 1367(a), to hear Plaintiff’s state law claims, if any.

2. Venue is proper in this Court, under 28 U.S.C. § 1391(b), because the incident at issue took place in Harris County, Texas within the United States Southern District of Texas.

### **PARTIES**

3. Plaintiff Percy Utley is a resident of Harris County, Texas.

4. The City of Houston, Texas, is a municipality existing under the laws of the State of Texas and situated mainly in Harris County, Texas in the U.S. Southern District of Texas and can be served with process by serving the City of Houston Secretary at 901 Bagby, Houston, TX 77012.

5. Police Chief Art Acevedo, *individually*, is a resident of Harris County, Texas and can served with process at 1200 Travis, Houston, Texas.

6. John Doe Officers are those officers involved in the false arrest, excessive force, and First Amendment violations against Plaintiff and can be served with process at 61 Reisner, Houston, TX 77002 or wherever they are found.

### **INTRODUCTION**

7. May 29, 2020 Plaintiff was peacefully protesting in downtown Houston on a sidewalk concerning the murder of Houston native George Floyd by a Minneapolis police officer and other matters. Plaintiff was committing no crime. A large group of Houston police officers in riot gear corralled Plaintiff and several other protesters. An HPD officer slammed Plaintiff against a building wall. Plaintiff and the others were taken to the Houston City Jail at 61 Reisner, Houston where they were held in handcuffs. Around 5 AM Plaintiff was let go without charges.

### **ADDITIONAL FACTS**

8. Percy Utley, 36, is an African American male who is a glazer and a father who lives in Houston, Texas.

9. Percy was very concerned with the recent death of Houston native George Floyd by Minneapolis police on May 25, 2020.

10. Percy attended a protest march and rally concerning George Floyd from Discovery Green to Houston City Hall which occurred on May 29, 2020 from about 2 PM to 4 PM. The march was peaceful.

11. After the march Percy went to eat dinner. After dinner Percy joined some protestors in downtown Houston chanting such slogans such as “Say his name. George Floyd.” Percy desired to be with the like-minded individuals concerned about the death of George Floyd and other political and social matters.

12. Percy and some protestors were at the corner of Rusk and Main at around 10:30 PM when a group of Houston police officers in riot gear told the protestors to “disburse” and to “go home” causing Percy to leave the area. Percy did want to “disburse” or “go home” but wanted to remain with the other protestors and continue with the chanting and talking about the issues associated with the death of George Floyd. There was no legal reason for the Houston police to request “disbursing” or requiring Percy and the other protestors to go home.

13. As Percy was attempting to leave, the group of HPD officers surrounded Percy and other protestors and said they were going to jail.

14. One HPD officer pushed Percy against a wall causing pain.

15. Percy was handcuffed with a “zip tie” as were many other protestors who had been corralled by the HPD officers. No officer articulated any valid reason for the arrest.

16. Percy was uncertain as to how long he would be in jail so he called his brother. At some point Percy’s brother came to the area and had Percy’s vehicle towed at a cost of \$150.00.

17. Eventually Percy and other protestors were put in a bus and taken to the Houston

City Jail at 61 Reisner in Houston.

18. Plaintiff's case was eventually dropped.

19. Over 700 others charged with obstructing a roadway during the George Floyd protests in late May 2020 and early June 2020 also had their cases dismissed. Dozens of these protestors were also arrested by Houston Police when they had committed no crime.

20. During the protests Plaintiff had not obstructed any roadway or committed any crime.

21. City officials described the protest as "no significant damages or injuries" having occurred.

22. Days prior to the arrest of Domingo and Percy Houston Police Chief Art Acevedo (Chief Acevedo) took charge of the police response to the George Floyd related protests.

23. Chief Acevedo is a policymaker for the City in police matters including the response to George Floyd-related protests. He is the top executive officer of the police department.

24. Chief Acevedo implemented plans to allow the arrest of individuals who had not committed a crime like Percy, Domingo Herrera, and many other protestors.

25. Chief Acevedo implemented plans to "kettle" protestors together by surrounding protestors, for instance, by having lines of officers on both ends of a Houston block and then move in from both ends until the protestors were forced together. Many of these protestors, including Herrera and Utley, had committed no crime and there was no reasonable suspicion they had committed a crime.

26. At no time that evening did Percy commit any crime nor did he see any of the protestors commit any crime. All the HPD officers present could see the legal activities of the protestors and the illegal activities of other officers. No HPD officer intervened by words or actions

to prevent any of the actions of any other HPD officer.

27. Percy was let go from the jail at around 5 AM the next morning without any charges. As Percy was being let go an HPD officer stated if Percy came back out again Percy would get two “charges.” Percy very much wanted to continue to be with the other like-minded protestors and chant slogans and walk in the downtown area but did not based upon the threats of charges by the HPD officer and what had just happened to him.

28. Due to being arrested Percy missed a day of work at a loss of around \$400.00.

29. Prior to Percy’s arrest The City of Houston created a plan to arrest protestors and jail them to reduce the number of protestors in the downtown Houston area as it was thought this would decrease the probability of property damage. There was no requirement, or it was understood that, it was not necessary that there was probable cause that the arrested protestors had committed a crime prior to arrest.

30. Percy also suffered physical pain and at least anxiety, fear, and depression due to HPD’s actions and inactions and will likely suffer the same into the future.

### **VIOLATION OF THE 1<sup>ST</sup>, 4<sup>TH</sup>, AND 14<sup>TH</sup> AMENDMENTS**

31. Percy incorporates all preceding paragraphs as if set fully set forth herein.

32. The First Amendment provides, in part, that:

*Congress shall make no law respecting [] abridging the freedom of speech [] the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

33. The Fourth Amendment guarantees everyone the right “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

34. The Fourteenth Amendment provides that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

35. All the above Constitutional violations are actionable pursuant to 42 U.S.C. Section 1983 and 1988.

36. The City of Houston through the Mayor, Chief of Police and other police hierarchy had a plan to arrest the protestors without probable cause making the City liable under *Monell*.

### **PUNITIVE DAMAGES**

37. Percy incorporates all preceding paragraphs as if set fully herein.

38. The John Doe Officers actions and inactions cause them to be liable for punitive damages as they were consciously and deliberately indifferent to the plaintiff’s constitutional rights and they did the acts knowingly, such acts being extreme and outrageous and shocking to the conscious.

### **ATTORNEYS’ FEES**

39. Percy is entitled to recover attorneys’ fees and costs to enforce his Constitutional rights and under 42 U.S.C. Sections 1983 and 1988.

### **JURY TRIAL**

40. Percy requests a trial by jury on all issues triable to a jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Percy Utley requests that the Court:

- A. Enter judgment for the plaintiff and against Defendants holding them jointly and severally liable;
- B. Find that Plaintiff is the prevailing party in this case and award attorneys' fees and costs, pursuant to federal law, as noted against all defendants;
- C. Award damages to Plaintiff for the violations of his rights under the 1<sup>st</sup>, 4<sup>th</sup> and 14<sup>th</sup> Amendments and under state law;
- D. Award Pre- and post-judgement interest;
- E. Award Punitive damages against each and every individually named defendant, and
- F. Grant such other and further relief as appears reasonable and just, to which plaintiff shows himself entitled.

Respectfully submitted,

/s/ Randall L. Kallinen

Randall L. Kallinen

Kallinen Law PLLC

State Bar of Texas No. 00790995

Southern District of Texas Bar No.: 19417

511 Broadway Street

Houston, Texas 77012

Telephone: 713.320.3785

FAX: 713.893.6737

E-mail: AttorneyKallinen@aol.com

Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I certify that on this October 19, 2020 I have served a true and correct copy of the foregoing document was delivered in accordance with the Federal Rules of Civil Procedure to all ECF notice attorneys of record.

/s/ Randall L. Kallinen  
Randall L. Kallinen